

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

APRIL TERM, 1907.

485

No. 1775.

EDWIN H. EASTERLING, GUARDIAN. APPELLANT,

vs.

GEORGE D. HORNING.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED APRIL 11, 1907.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1907.

No. 1775.

EDWIN H. EASTERLING, AS GUARDIAN OF THE ESTATE
OF BEATRICE MAE LANG, APPELLANT,

vs.

GEORGE D. HORNING.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1775.

EDWIN H. EASTERLING, Guardian, Appellant,
vs.
GEORGE D. HORNING.

a Supreme Court of the District of Columbia.

At Law. No. 48754.

EDWIN H. EASTERLING, Guardian, Plaintiff,
vs.
GEORGE D. HORNING, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had, in the above-entitled cause, to wit:

1 *Declaration.*

Filed August 23, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48754.

EDWIN H. EASTERLING, Guardian, Plaintiff,
vs.
GEORGE D. HORNING, Defendant.

The plaintiff, Edwin H. Easterling, as guardian of the estate of Beatrice Mae Lang, infant, sues the defendant, George D. Horning, for wrongly taking and unjustly detaining certain goods and chattels the property of the said Beatrice Mae Lang described as follows, to wit: 1 maltese cross of diamonds ring, 1 opal and diamond cluster ring, 1 turquoise and diamond cluster ring, 1 pearl and diamond cluster ring, 1 four stone pearl ring, 1 two stone red sapphire imitation ring, 1 aqua marine ring, 1 aqua marine imitation ring, 1 opal ring (chipped), 1 cameo necklace, 1 diamond necklace, 1 cameo

set of three pieces, 1 red enamel and pearl watch, 1 red and gold enamel watch, 1 green and gold enamel watch, 1 pearl watch pin, 1 green enamel watch pin, 1 long neck chain, of the value of \$1000.

That the plaintiff as said guardian is entitled to the custody of said goods and chattels and demands that the same be taken from the defendant and delivered to the plaintiff; or, if the said goods and chattels are cloigned, that plaintiff may have judgment of their said value and all mesno profits and damages, which plaintiff estimates at \$100. besides costs.

WILSON & BARKSDALE,
Attorneys for Plaintiff.

Notice to Plead.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

WILSON & BARKSDALE,
Attorneys for Plaintiff.

Affidavit.

DISTRICT OF COLUMBIA:

Edwin H. Easterling on oath says that he is the plaintiff in the above entitled and foregoing cause and that, according to his information and belief, that he is entitled to recover possession of the goods and chattels set out in the declaration and proposed to be replevied. That the defendant has seized and detained and detains the said goods and chattels and that the same were not subject to such seizure and detention and were not taken upon any writ of replevin between the parties.

EDWIN H. EASTERLING.

3 Subscribed and sworn to before me this 23rd day of August, 1906.

J. R. YOUNG, *Clerk*,
By ALF. G. BUHRMAN,
Ass't Clerk.

Plea of Defendant.

Filed September 11, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48754.

EDWIN H. EASTERLING, Guardian, Plaintiff,
vs.

GEORGE D. HORNING, Defendant.

Now comes the defendant and says that he is not guilty in manner and form as in said declaration alleged.

TUCKER & KENYON &
E. S. BAILEY,
Attorneys for Defendant.

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Joinder in Issue.

Filed September 12, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48754.

EDWIN H. EASTERLING, Guardian, Plaintiff,

vs.

GEORGE D. HORNING, Defendant.

The plaintiff joins issue upon the defendant's plea.

WILSON & BARKSDALE,

Attorneys for Plaintiff.

Memorandum.

February 6, 1907.—Verdict for defendant for Four Hundred and Fifty Dollars (\$450.00).

5 Supreme Court of the District of Columbia.

FRIDAY, *February* 15, 1907.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

At Law. No. 48754.

EDWIN H. EASTERLING, Pl't'f,

vs.

GEORGE D. HORNING, Def't.

Upon hearing the plaintiffs motion for a new trial, it is considered that the same be, and hereby is overruled, and judgment on verdict ordered:

Therefore it is considered that the plaintiff return to the defendant the property replevied with costs, or on failure that the defendant recover against the plaintiff and The Aetna Indemnity Company, his surety, Four hundred and fifty dollars (\$450.) in manner and form as aforesaid assessed, together with his costs of suit to be taxed by the Clerk and have execution thereof.

The plaintiff notes an appeal to the Court of Appeals and the penalty of the bond to act as a Supersedeas is fixed in the sum of Nine hundred dollars (\$900.) or the bond for costs at Fifty dollars (\$50.).

6

Memorandum.

March 8, 1907.—Appeal (supersedeas) bond filed.

Supreme Court of the District of Columbia.

FRIDAY, March 15, 1907.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

At Law. No. 48754.

EDWIN H. EASTERLING, Guardian, Pl'tf,

vs.

GEORGE D. HORNING, Def't.

Now comes here the plaintiff by his Attorneys and prays the Court to sign, seal and make part of the record, his bill of exceptions taken during the trial of this cause, now for then, which is accordingly done.

7

Bill of Exceptions.

Filed March 15, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 48754.

EDWIN H. EASTERLING, Guardian,

vs.

GEORGE D. HORNING.

The above entitled cause came on for hearing before Mr. Justice Wright and a jury on February 6th, 1907, and thereupon, and after the jury had been sworn to truly try the issues joined in said cause, the plaintiff, Edwin H. Easterling, to maintain the issues on his part joined, testified as follows:

That he was appointed guardian of the estate and person of Beatrice Mae Lang by the Probate Court on August 22, 1906, succeeding as guardian Fyanna E. Myers, who died August 17, 1906. The order appointing witness guardian was offered in evidence and reads as follows:

"This cause coming on to be heard upon the petition of Beatrice Mae Lang by next friend filed herein August 22, 1906, praying for the appointment of a guardian of her person and estate and it appearing that said infant is above fourteen years of age and appeared in open Court and selected Edwin H. Easterling as her guardian, it is this 22nd day of August 1906, ordered that Edwin H. Easterling be and he is hereby appointed guardian of the person and estate of said Beatrice Mae Lang, born May 8, 1891, and letters of guardianship will issue to him upon giving bond in the penal sum of \$1000 conditioned for the faithful discharge of his duties as such guardian.

8

WENDELL P. STAFFORD, *Justice.*"

Among the papers that came into plaintiff's hands was pawn ticket No. 1897. Said ticket was produced and offered in evidence and read to the jury and admitted by counsel for the defendant to be in the handwriting of George D. Horning. It was as follows:

No. 1897.

\$300.

WASHINGTON, D. C., 2/3, 1904.

This certifies that I have loaned to F. E. M. \$300 on 9 rings, 2 necklaces, 3 watches, 1 cameo set, 2 watch pins, 1 long neck chain, as a pledge with interest at 3 per centum per month or fraction thereof. I will not be responsible for loss or damage of any of the goods, articles or things covered by this pledge, by fire, robbery or other casualty, and am not to be held responsible in any way if said goods, articles or things, or any of them, are delivered to the bearer of this ticket. If this pledge is not sooner redeemed, it will be sold, in accordance with the consent of the pledgee, hereunto annexed, 12 months from date hereof, or in case of renewal 12 months from the date to which interest shall be paid.

GEORGE D. HORNING.

9 I hereby consent to the sale of the goods, articles and things covered by this pledge 12 months after the date hereof in event that the same are not redeemed; or in event of a renewal of the loan 12 months from the date to which interest shall be paid.
 ———, *Pledgee.*

(Listed on back of ticket:)

One maltese cross of diamonds ring, one opal and diamond cluster ring, one turquoise and diamond cluster ring, one pearl and diamond cluster ring, one four stone pearl ring, one two stone red sapphire imitation ring, one aqua marine imitation ring, one opal ring (chipped), one cameo necklace, one diamond necklace, one cameo set of three pins, one red enamel and pearl watch, one red and gold enamel watch, one green and gold enamel watch, one pearl watch pin, one green enamel watch pin, one long neck chain.

Witness thereupon produced the articles described in the pawn ticket, which had been replevied from the defendant and are the same as are set out in the plaintiff's declaration.

Thereupon to further maintain the issues joined on his part, the plaintiff produced Beatrice Mac Lang, who testified as follows:

That she is the daughter of Charles J. and Blanche Myers Lang, and that her father died in 1891, and her mother, after marrying

10 Harry F. Waltman, died June 14, 1901. That she was born May 8, 1891, and is now 15 years of age and has lived with

her grandmother, Fyanna E. Myers, all her life up to the time of her grandmother's death. That she has seen all this jewelry that has been replevied, in her mother's possession except the four stone pearl ring, the cameo necklace and the cameo set of three pins. That she went with her grandmother to the pawn shop of George D. Horning on February 3, 1904, when her grandmother pawned the

articles replevied in this suit. That witness had seen the articles before and saw her grandmother put some jewelry in her satchel at home that morning, but witness did not see the separate pieces. That witness heard her grandmother tell Horning at the time the goods were pawned that they were left to the witness under the will of witness' mother to be kept by her (the grandmother) until witness became of age, and that she was the guardian of witness and as the goods were lying idle she thought she might as well get some money on them.

Thereupon counsel for plaintiff offered in evidence the will of Blanche M. Waltman, which is as follows:

"In the name of God, Amen. I, Blanche M. Waltman, of the District of Columbia, being of sound and disposing mind, memory, and understanding, considering the certainty of death and the uncertainty of the time thereof, and being desirous to settle my worldly affairs, and thereby be the better prepared to leave this world when it shall please God to call me hence, do therefore make and publish this my last will and testament, in manner and form following, that is to say:

11 First and principally, I commit my soul into the hands of Almighty God, and my body to the earth, to be decently buried, and after my debts and funeral charges are paid, I devise and bequeath as follows:

To my dear daughter, Beatrice Mae Lang, I give my property in Takoma Park, D. C., known as Lot 1, Block 1, with a life interest in the same for my father and mother, Mr. and Mrs. A. J. Myers. At the death of my daughter Beatrice the property to descend to her children. I also give to Beatrice Mae Lang, my undivided interest in lots 1, 2, 3, and 4, Block No. 26, Kent District, Prince George County, Maryland, all of my household effects in Virginia, Takoma Park, or elsewhere; all of my personal effects, dresses, ornaments, &c., my rings—one maltese cross of diamonds, 2 opal and diamond—1 turquois and diamond, 1 pearl and diamond, 1 pearl, 1 red-sapphire, 1 aqua-marine, 1 opal, all of my breast pins, 1 cameo necklace, 1 diamond necklace, with many other pieces of jewelry, all to be hers, and my mother to keep until her coming of age. My gold watch, and my enamel and pearl watch, and red and gold enamel watch I also give her.

Any money that may be in either the National Safe Deposit Savings and Trust Co., Cor. of 15 St. & N. Y. Ave. or and that may be in the Washington Loan & Trust Co., cor. of F and 9th Sts. to be my daughter's Beatrice Mae Lang—my father and mother to use the same for her benefit, as they see fit.

12 With the most tender love for all three, my dear daughter, my dear mother and my dear father, and to all my near friends.

BLANCHE M. WALTMAN.

And lastly I do hereby constitute and appoint my father and mother, Mr. and Mrs. A. J. Myers, to be executors of this my last will and testament, revoking and annulling all former wills by me

heretofore made, ratifying and confirming this and none other to be my last will and testament.

In testimony whereof, I have set my hand to this my last will and testament, at this 14 day of October in the year of our Lord one thousand eight hundred and ninety-eight.

The foregoing instrument was signed by the said Blanche M. Waltman in our presence, and by her published and declared as and for her last will and testament, and at her request, and in her presence, and in the presence of each other, we hereunto subscribe our names as attesting witnesses, at Washington, D. C., this 14th day of October, A. D. 1898.

NELLIE P. WILKINSON,
Resides at 1353 Kenesaw Avenue.
W. H. WILKINSON,
Resides at 1353 Kenesaw Avenue.

POST OFFICE DEPARTMENT, CONTRACT OFFICE,
WASHINGTON, D. C., April 30, 1901.

Referring to my will (the only one I ever made) dated during 1898, my father having died in the meantime, I hereby declare this my codicil thereto: I appoint and will that my mother Fyanna Eliza Myers, shall be guardian of my child Beatrice Mae Lang, and appoint and will that she (my mother) shall be sole executrix of my property (both real and personal) without bond.

BLANCHE M. WALTMAN, *Testatrix*.

Witness:

M. K. CAMPBELL.

BLANCHE M. LANG WALTMAN, *Testatrix*.

Witness:

ANNIE MATTINGLY.

Witness:

R. B. DURFEE, *M. D.*

Since making will referred
to I have married Mr.
Harry Franklin Waltman.
B. M. W."

Thereupon counsel for plaintiff offered in evidence all papers in case Probate No. 10243 the Estate of Blanche M. Waltman showing that said will was admitted to probate and record July 24, 1901, and letters testamentary granted to Fyanna E. Myers. The petition for the probate of the will alleges that there are no debts, and the final account of executrix shows the same thing.

Thereupon counsel for plaintiff offered in evidence all papers in Guardianship No. 2749 Estate of Beatrice Mae Lang, Infant, showing that Fyanna E. Myers was appointed guardian of the estate and person of Beatrice Mae Lang on June 20, 1901, and gave bond in the sum of \$50 and she had not been removed at time of her

death. The order appointing her guardian was in evidence and reads as follows:

"Upon consideration of the petition of Fyanna Eliza Myers it is this 20th day of June 1901, ordered, adjudged and decreed that the said Fyanna Eliza Myers be, and she is hereby, appointed guardian of the person and estate of the said Beatrice Mae Lang, born 14 on the 8th day of May 1891, said infant being now personally present in Court, and upon her giving bond as required by law in the penalty of \$50, letters of guardianship shall issue to her accordingly.

T. H. ANDERSON, *Justice.*"

That the only order passed in the said guardianship case authorizing the guardian in any way to dispose of her ward's estate was offered in evidence and is as follows:

"Upon consideration of the petition of Fyanna E. Myers, Guardian of said Beatrice Mae Lang, filed herein this day, praying leave to borrow \$900 upon lot 1 Block 1, Tacoma Park, D. C., in which said infant has an interest, and it appearing to the Court that it is for the best interest of the infant that said loan be authorized, it is this 25th day of June, A. D. 1902, by the Court ordered, adjudged and decreed that said Fyanna E. Myers, guardian to Beatrice Mae Lang, be, and she is hereby, authorized and directed to borrow the sum of \$900, and as security therefor to execute a note and deed of trust upon lot 1, block 1, of Benjamin F. Gilbert's subdivision of lots 2 and 3 "Grammar Farm" now known as "Takoma Park" as per plat recorded in the Surveyor's Office of the District of Columbia in Liber Governor Shepherd, folio 175. And it is further ordered that there shall be no liability upon the lender of said money to see to the application of the money loaned.

T. H. ANDERSON, *Justice.*"

15 That there is no return made by Mrs. Myers to the Probate Court of any money borrowed on jewelry, or any account of same. That Edwin H. Easterling was appointed guardian August 22, 1906, and authorized upon his petition to replevin the jewelry in this suit. His petition for such authority is as follows:

"Your petitioner respectfully shows to the Court:

1. That he has been regularly appointed Guardian of the estate of Beatrice Mae Lang and has duly qualified as such.

2. That he is informed and believes and so alleges that Fyanna E. Myers, deceased, was formerly guardian of the estate of the said Beatrice Mae Lang and that while such guardian that she pledged certain jewelry belonging to the said Beatrice Mae Lang with one George D. Horning, a pawnbroker, without right and without authority of this Court. That the said jewelry is now in the hands of the said George D. Horning, who upon demand made, has refused to surrender the said property to your petitioner and has threatened to dispose of it by sale on August 24, 1906.

Premises considered, petitioner prays:

1. That your petitioner may have authority of this Court to

replevin the said property or to take such legal steps for the recovery of the same as he may be advised.

2. That he may have such other and further relief in the premises as to the Court may seem proper.

EDWIN H. EASTERLING, *Petitioner*.

WILSON & BARKSDALE,
Attorneys for Petitioner.

16 Thereupon the following order was passed:

"Upon consideration of the petition of Edwin H. Easterling filed in this cause this day, it is this 23d day of August 1906, ordered that the said Edwin H. Easterling be, and he is hereby, authorized to replevin the property of the said Beatrice Mae Lang referred to in said petition or to take such steps as may be necessary in the premises to recover and preserve the rights of this ward."

WENDELL P. STAFFORD, *Justice*.

Thereupon the plaintiff rested.

Whereupon to maintain the issues on his part joined the defendant testified as follows:

That he is the pawnbroker and knew the late Fyanna E. Myers. That she and her granddaughter, Beatrice Mae Lang, came to his shop on February 3, 1904, with the jewelry replevied in this suit. That nothing was said to him by Mrs. Myers at that time or at any other time about her being the guardian of Beatrice Mae Lang; that Mrs. Myers did not tell him that the jewelry in question was in her possession as guardian of her granddaughter, and he had no knowledge, until long after he had made the loan, that such was claimed to be the fact. That he took the jewelry in the regular course of business and in good faith believing Mrs. Myers to be the owner of it, and that he loaned \$300 on it to Mrs. Myers—

17 That he called Mr. Herman into his office at the time to appraise the goods in order to determine how much he could safely loan on them. In the opinion of the witness the jewelry is worth about \$450. That he made no examination of the records of the Probate Court and had no knowledge of the claim of Beatrice Mae Lang until about the time the goods were replevied.

Thereupon to further maintain the issues on his part joined the defendant offered as a witness Mr. Herman, who testified as follows:

That he was called by Mr. Horning to appraise the jewelry in this suit on or about February 3, 1904. That when he went into the room Mrs. Myers and a little girl were there. That he did not hear Mrs. Myers tell Mr. Horning that she was guardian of Beatrice Mae Lang and that the jewelry had been left to Beatrice under the will of her mother to be kept for her until she became of age, or say anything about how it came into her possession.

Thereupon the defendant rested.

The plaintiff having no further testimony to offer, and the plaintiff and the defendant having agreed that the value of the property seized under the writ of replevin, was \$450, the defendant moved

the Court, on all the evidence, to direct a verdict for the defendant, on the ground that the defendant had by the pledge to him acquired a special property in, and the right of possession to, the pledged goods, and had acquired the goods *bona fide* and for a valuable consideration, and as there was no evidence of any facts sufficient
 18 to charge the defendant with notice of any intended fraud on the pledgor's part towards her ward, or any intended misapplication of the proceeds of the pledge, and also no evidence that any fraud had actually been perpetrated, or that the proceeds had been misapplied, it was immaterial whether the defendant had or had not notice of the capacity in which Mrs. Myers held the property. Which motion counsel for plaintiff resisted on the ground that Mrs. Myers was a mere custodian of this property and did not hold it as guardian and even if she held it as testamentary guardian she had no authority under the law to pledge it without an order of the Court; and further, that in any event the jury should say from all the evidence whether the defendant did not take the jewelry under such circumstances as to require of him, an investigation of the conditions or trusts under which Mrs. Myers held it. The motion was thereupon granted, and the jury directed to return a verdict for the defendant. To the granting of said motion and instructions and before the jury returned its verdict and after the jury returned its verdict, counsel for plaintiff excepted, which exception was noted by the Court on its minutes.

Be it remembered that the substance of the whole evidence in this case is contained in the foregoing bill of exceptions, which is hereby made a part of the record in this case, and at the request of counsel for plaintiff said bill of exceptions is signed and sealed now for then this 15 day of March 1907.

DAN THEW WRIGIT, *Justice.*

Settled by consent:

WILSON & BARKSDALE,
Attorneys for Plaintiff.

TUCKER & KENYON,
Attorneys for Defendant.

19 *Designation for Transcript of Record.*

Filed March 16, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 48754.

EDWIN H. EASTERLING, Guardian,
vs.

GEORGE D. HORNING.

The Clerk in preparing the transcript for the Court of Appeals in the above entitled cause will embody the following:

1. Declaration.
2. Plea.
3. Joinder in Issue.
4. Memorandum: Direction of Verdict for Defendant.
5. Judgment on Verdict, appeal noted and bond fixed.
6. Memorandum: Appeal bond filed and approved.
7. Bill of Exceptions.

WILSON & BARKSDALE,
Attorneys for Plaintiff.

20 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 19, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 48754, at law, wherein Edwin H. Easterling, Guardian, is Plaintiff, and George D. Horning, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 11th day of April, A. D. 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1775. Edwin H. Easterling, guardian, appellant, *vs.* George D. Horning. Court of Appeals, District of Columbia. Filed Apr. 11, 1907. Henry W. Hodges, clerk.